



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

and traveling duties". *Held*, that the plaintiff could recover. *Clark v. Travelers' Ins. Co.*, (Vt., 1920), 111 Atl. 449.

It appeared from the evidence in the case that although the plaintiff made the two trips to New York, he did so without due regard for his health, and experienced considerable bodily pain. That being the case, the decision of the court was not inconsistent with the proposition that an attempt to perform some of the duties of one's occupation, when such an attempt is an indiscretion or an error of judgment, will not defeat a claim of total disability. *United Casualty Co. v. Perryman*, 203 Ala. 212. It must also be borne in mind that the courts in these insurance cases show a tendency to be very liberal toward the insured and to construe the language of the policy against the insurer on the ground that he chooses the language of the contract. The instant case is in accord with other authorities on this question of what amounts to total disability, although in some of the cases the distinction between partial and total disability is very finely drawn. The distinction seems to turn largely on the clause in the policy defining the application of the indemnity to the injury and to the occupation, and defining the disability. In the following cases the clauses in the policies were the same as that in the case at bar and yet a recovery was denied; *Spicer v. Commercial Mutual Accident Ins. Co.*, 4 Pa. Dist. Rep. 271; *Gracey v. Peoples' Mut. Accident Ins. Asso.*, 21 Pitts. L. J. N. S. 25; *Ford v. U. S. Mut. Accident Relief Co.*, 148 Mass. 153; *Bean v. Travelers' Ins. Co.*, 94 Cal. 581; *Knapp v. Preferred Mutual Accident Association*, 53 Hun (N. Y.) 84; *Stevens v. Peoples' Mutual Accident Asso.*, 150 Pa. 132. In the following cases a recovery was allowed: *Young v. Travelers' Ins. Co.*, 80 Me. 244; *Baldwin v. Fraternal Accident Ass'n*, 31 Misc. Rep. 124; *Lobdill v. Laboring Men's Mutual Aid Ass'n*, 69 Minn. 14; *Turner v. Fidelity and Casualty Co.*, 112 Mich. 425. It appears from an examination of the cases that the courts of last resort are not in complete accord, but the weight of authority seems to be that the insured is "totally disabled" within the meaning of the policy if he is unable, with prudence and a due regard for his physical welfare, to perform the substantial and material acts necessary to carry on his occupation. Even though the insured is able to perform a few occasional and incidental acts pertaining to his occupation, yet if he is unable to perform the substantial and material portion of his work he is considered as "totally disabled". See 4 COOLEY'S BRIEFS ON INSURANCE, 3290. As the court in the instant case very well points out, the provision of disability in such a policy cannot be given a literal construction. If it were given such a construction the company could always avoid liability unless the insured lost his life or reason as a result of the injury, for a man can always transact some parts of his business if he is possessed of his mental faculties. The term "total disability" then must be given a reasonable interpretation depending in a great measure upon the circumstances of each particular case. 4 COOLEY'S BRIEFS ON INSURANCE, 3288.

INTOXICATING LIQUORS—STATUTORY FORFEITURE OF AUTOMOBILE CARRYING LIQUOR—DUE PROCESS.—Claimant intrusted his automobile to his chauffeur to take to a garage in Washington, D. C. The chauffeur stole the machine

and used it illegally to carry liquor in Virginia, where it was seized and forfeited under a Virginia statute (Acts 1918, p. 612). *Held*, the forfeiture was valid, notwithstanding the owner was unaware of the illegal use of the automobile. *Buchholz v. Commonwealth* (Va., 1920), 102 S. E. 760.

Two conflicting views stand out in cases involving statutory forfeiture of chattels for illegal use. The one is that the necessity of the situation demands a liberal construction of the statutes involved, to the end of giving efficacy to the law. *U. S. v. Stowell*, 133 U. S. 1; *U. S. v. One Saxon Automobile*, 257 Fed. 251; *U. S. v. Two Bay Mules*, 36 Fed. 84. The other view is that the usual strict construction of criminal statutes should be adhered to. *U. S. v. One Cadillac Eight Automobile*, 255 Fed. 173; *State v. Davis* (Utah, 1919), 184 Pac. 161. The courts sustaining the former construction favor the view that such proceedings are *in rem*, the chattel itself being the wrongdoer, and that therefore the *animus* of the owner is immaterial. *U. S. v. Two Barrels of Whisky*, 96 Fed. 479. But in other instances it has been considered that the proceedings are criminal in their nature and directed against the owner of the chattel. *Boyd v. U. S.*, 116 U. S. 616. In this view of the matter, the guilt or innocence of the owner is, of course, controlling. In the principal case the court adopts the liberal view of the statute, but does not go so far as to declare that the forfeiture would have been valid had the custody and possession of the machine been taken from the owner by a thief, without the owner's knowledge. Such was not the fact in the instant case because, although the chauffeur had stolen the car under the law of the District of Columbia, still he had originally been entrusted with the custody by the owner, who thereby assumed the risk of subsequent illegal operation. It has been held that such statutes as the one here in question do not effect a taking of property without due process of law, but are within the police power of the state, provided the parties interested are given notice and have an opportunity to be heard in a judicial proceeding. *Kansas v. Ziebold*, 123 U. S. 623. The justification for the holding in the principal case, which is unquestionably harsh, would seem to lie in the apparent inability to meet a situation of great public concern otherwise than by sanctioning hardship in certain individual cases in the interest of the greater public welfare.

MORTGAGES—CONVEYANCE SUBJECT TO MORTGAGE.—EXTENSION OF TIME TO GRANTEE—MEASURE OF DISCHARGE.—Mortgagor conveyed premises to grantee, who took subject to the mortgage. Mortgagee extended time to grantee by agreement without consent of the mortgagor. In a suit for foreclosure, *held*, the mortgagor as a surety is completely released from personal liability, regardless of the value of the land, and the mortgagee cannot recover a deficiency judgment against the mortgagor. *Braun v. Crew et ux.* (Cal., 1920), 192 Pac. 531.

When, upon conveyance of the mortgaged premises, the grantee of the mortgagor assumes payment of the mortgage, the grantee becomes personally liable for the whole debt, *Johns v. Wilson*, 180 U. S. 440; and as is